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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

FRANKLIN K. LANE, SECRETARY OF THE Interior, and Clay Tallman, Commissioner of the General Land Office, appellants,

v.

THE STATE OF NEW MEXICO.

No. 412.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

THE STATE OF WYOMING, H. S. RIDGELY and the Midwest Refining Company, appellants,

v.

THE UNITED STATES OF AMERICA.

No. 742.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MOTION TO ADVANCE.

Comes now the Solicitor General, on behalf of the appellants in No. 412 and of the appellee in No. 742, and respectfully moves the court to advance the above-entitled cases to be heard at the next term of this court immediately following *Franklin K. Lane, Secretary of the Interior, et al.* (*John Barton*

Payne, Secretary, etc., substitute appellant) v. *Central Pacific Railway Company*, No. 34, October Term, 1919.

These two cases involve the same broad question presented in No. 34—that is, as to the rights acquired under a railroad indemnity selection or under a so-called exchange selection, made pursuant to sections 2275 and 2276, U. S. Rev. Stats., as amended by the act of February 28, 1891. (26 Stat. 796, 797, ch. 384; U. S. Comp. Stats. 1916, secs. 4860 and 4861.)

In *Lane* v. *Central Pacific Railway Company* the company's indemnity selection, based upon lands lost to it in the place limits, was rejected because, subsequently to the filing of the selection, but before its approval by the Secretary of the Interior, the land embraced therein had been withdrawn under authority of the act of June 25, 1910 (36 Stat. 847), and placed in a power site reservation.

The case of *Lane* v. *The State of New Mexico* involves a selection made under sections 2275 and 2276, R. S., by the State in exchange for certain of its lands which were within the boundaries of a national forest. Before the selection was approved by the Secretary of the Interior the base land within the national forest was eliminated therefrom, and for that reason, there being then no valid base to support the lieu or exchange selection, the Secretary refused to approve it.

Each of these cases was brought in the Supreme Court of the District of Columbia to enjoin the Secretary of the Interior from enforcing the ruling

rejecting the selection and for a mandatory injunction requiring the recognition of the asserted right of the selector to the land involved by virtue of the filing of the selection.

The State of Wyoming et al. v. *The United States of America*, likewise involves an exchange selection under sections 2275 and 2276, United States Revised Statutes. There, the State selected a tract in lieu of land owned by it which was within a national forest; after selection but before approval by the Secretary of the Interior, the land was withdrawn as oil land under the act of June 25, 1910, *supra*. The State was given an opportunity to take a surface patent reserving the mineral deposits to the Government, but declined to do so, whereupon the selection was held for cancellation. As operations for the extraction of the oil contents of the land were being prosecuted by claimant under the State, the United States brought suit to quiet title, for receiver and an accounting.

In view of the fact that these cases present the same general question, it is believed that it will be advantageous to have them argued at the same time as No. 34 in their respective orders.

Appellee's counsel in No. 412 concur in this motion. Notice hereof has been served upon appellants' counsel in No. 742.

ALEX. C. KING,
Solicitor General.

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